

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<p>ROBERT CORWIN on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-v-</p> <p>BERND R. SEIZINGER, MARTINE GEORGE, MARCEL ROSENCZWEIG, and GPC BIOTECH AG,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.: 07-CV-6728-DC</p> <p>ECF CASE</p>
<p>AUDREY DANG, Individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-v-</p> <p>GPC BIOTECH AG, BERND SEIZINGER, MARTINE GEORGE, MARCEL ROZENCWEIG,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 07-cv-07476-DC</p>
<p>ISTVAN TEMESFOI, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-v-</p> <p>GPC BIOTECH AG, BERND R. SEIZINGER, MARTINE GEORGE, and MARCEL ROSENCZWEIG,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 07-cv-7016</p>

**MEMORANDUM OF LAW IN REPLY TO COMPETING  
MOTIONS TO BE APPOINTED LEAD PLAINTIFF AND  
FOR APPROVAL OF LEAD COUNSEL**

Movants Chua and Biswas, the largest investors who live in the United States and purchased shares in the United States securities markets, are the most adequate lead plaintiff group to represent the GPC Biotech's United States investors. Movants Chua and Biswas, as the only United States investors moving to be appointed as a lead plaintiff, have unquestionable standing, and can see this case through to the end, in tandem with the most adequate foreign investors, or by themselves if need be. Neither Axxion nor the Temesfoi Group have presented any evidence to rebut the presumption that Chua and Biswas are the most adequate lead plaintiffs to represent the U.S. investors in this case. Movants Chua and Biswas of the GPC Biotech Group are the only investors not subject to an attack on the grounds that have caused difficulty for foreign investors in recent securities class actions in this District—*i.e.*, subject matter jurisdiction over their claims, and questions as to whether a U.S. judgment will be enforced in certain European nations. These issues have been particularly noted by the courts where, as here, the stock purchases were made on the German exchange.

Axxion and the Temesfoi Lead Plaintiff Group are foreign investors that purchased securities of a foreign company on the German exchange. As proposed in our prior submission, the most practical leadership structure for this case would be a pairing of the most adequate foreign investor and Movants Chua and Biswas so that all disparate interests are represented right from the outset. This approach was exactly how the court dealt with this same issue in *In re Cable & Wireless, PLC*, 217 F.R.D. 372 (E.D. Va. 2003). In *In re Cable & Wireless*, the court when considering competing motions for lead plaintiff filed by foreign investors and U.S. investors appointed both movants as co-lead plaintiffs and approved both movants' selection of counsel holding that "appointing [Mr.] Osinski and [the Ontario Teachers; Pension Plan] as lead co-plaintiffs, individual and institutional investors, members of the class who purchase the Defendant's ADRs and common stock will be adequately and fairly represented." *Id.* at 378

The U.S. investors within GPC Biotech Group are the only U.S. investors proposed as lead plaintiff by any of the movants. As such, U.S. investors Chua and Biswas are positioned to represent the interests of investors in GPC Biotech, and are not subject to any of the unique defenses that will be directed to both Axxion and the Temesfoi Lead Plaintiff Group. Therefore, the U.S. investors of the GPC Biotech Group respectfully submit that they should be appointed as the Lead Plaintiff for the United States investors and that the motions of Axxion and the Temesfoi Lead Plaintiff Group be denied to the extent they seek to represent both foreign and domestic investors.

### **ARGUMENT**

#### **A. Axxion and/or the Temesfoi Lead Plaintiff Group Should be Limited to Representing the European Investors**

This Court should avoid appointing a foreign lead plaintiff as sole Lead Plaintiff only to find out later that it cannot demonstrate subject matter jurisdiction, or that a U.S. judgment would not be respected in Europe as to European investors. This would create a substantial delay in the action, as a new Lead Plaintiff would have to step up at perhaps an advanced stage of the case, familiarize himself with all prior proceedings, and (along with the Court) deal with the implications of prior proceedings and decisions made by a Lead Plaintiff who lacked standing, and had not properly invoked the Court's subject matter jurisdiction. The better approach, as noted above, is to have foreign and domestic Lead Plaintiffs from the beginning who can work together. As previously stated, numerous courts have appointed multiple lead plaintiffs so as to ensure continuity of representation, and to reflect potential disparate interests. *See* the GPC Biotech Group's brief in further support of their motion, at p. 5. *See also, Cent. States Southeast & Southwest Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 2007 U.S. App. LEXIS 23090 (2d Cir. Oct. 3, 2007)(making clear the requirement that disparate plaintiff groups require separate representation).

As previously stated, the court in *In re Cable & Wireless, PLC Sec. Litig.*, recognizing that appointing only the U.S. investor as the lead plaintiff was not ideal because he could not adequately represent foreign shareholders, and that the foreign shareholder with the largest loss may lack subject matter jurisdiction, appointed both the foreign and domestic movants as co-lead plaintiff and approved their respective counsel as co-lead counsel. Movants Chua and Biswas of the GPC Biotech Group are the only investors not subject to an attack of the grounds of subject matter jurisdiction and therefore should be appointed as the Lead Plaintiff for the United States investors.

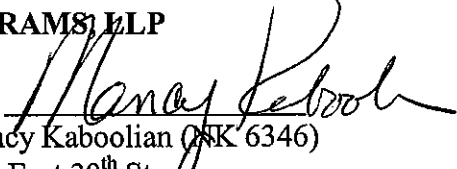
### CONCLUSION

For the foregoing reasons, Movants Chua and Biswas respectfully request that the Court: (ii) appoint them as Co-Lead Plaintiff in the consolidated action; and (iii) approve their choice of Abbey Spanier Rodd & Abrams, LLP as Co-Lead Counsel.

Dated: October 22, 2007  
New York, New York

Respectfully Submitted,

**ABBEY SPANIER RODD &  
ABRAMS LLP**

By:   
Nancy Kaboolian (SK 6346)  
212 East 39<sup>th</sup> Street  
New York, New York 10016  
Tel: (212) 889-3700  
Fax: (212) 684-5191

Proposed Lead Counsel

Laurence D. Paskowitz, Esq.  
Roy L. Jacobs, Esq.  
PASKOWITZ & ASSOCIATES  
60 East 42<sup>nd</sup> Street, 46<sup>th</sup> floor  
New York, New York 10016  
(212) 685-0969

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK                    )  
  )     ss.:  
COUNTY OF NEW YORK                )

I, Carolyn Davila, being duly sworn, deposes and says:


1. I am not a party to the action, over the age of 18 years, and am a legal secretary with the firm of Abbey Spanier Rodd & Abrams, LLP, 212 East 39<sup>th</sup> Street, New York, New York 10016, attorneys for plaintiffs.

2. On October 22, 2007, I caused a copy of the accompanying:

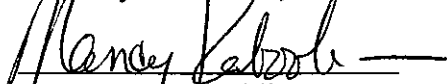
MEMORANDUM OF LAW IN REPLY TO COMPETING MOTIONS TO  
BE APPOINTED LEAD PLAINTIFF AND FOR APPROVAL OF LEAD  
COUNSEL

**AFFIDAVIT OF SERVICE**

to be served upon the following persons/entities listed on the attached service list by U.S. mail and the ECF filing rules.

  
Carolyn Davila

Sworn to before me this  
22nd day of October, 2007

  
Notary Public

**NANCY KABOOLIAN**  
Notary Public, State Of New York  
No. 01KA4742784  
Qualified In New York County  
Commission Expires March 30, 2011

**SERVICE LIST**

**Plaintiffs' Counsel**

Evan J. Smith, Esq.  
BRODSKY & SMITH LLC  
240 Mineola Blvd.  
Mineola, New York 11501  
(516) 741-4977

Marc A. Topaz, Esq.  
Richard A. Maniskas, Esq.  
Alison K. Clark, Esq.  
SCHIFFRIN & BARROWAY, LLP  
280 King of Prussia Road  
Radnor, PA 19087  
(610) 667-7706

Ralph M. Stone  
Thomas G. Ciarlone, Jr.  
SHALOV STONE BONNER & ROCCO LLP  
485 Seventh Avenue  
Suite 1000  
New York, New York 10018  
(212) 239-4340  
Fax: (212) 239-4310

**Defendants' Counsel**

John C. Scalzo  
SHEARMAN & STERLING LLP  
599 Lexington Avenue  
New York, New York 10022  
(212) 848-4510  
Fax: (646) 848-4510